THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.17949 of 1999

Between:

Smt.M.Aparna, W/o.M.Ramesh

And others

… Petitioners

And

The Commissioner,

Municipal Corporation of Warangal.

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.17949 of 1999

ORDER:

The petitioners allegedly purchased land admeasuring 240 Sq.yards comprised in survey No.1086 of Hanmakonda under registered sale deed dated 17.7.1997 from one Sri D.Srinivasa Rao, who allegedly purchased the property from his vendor under registered sale deed dated 08.3.1966. It appears, in 1979, when Warangal Municipality – the immediate precursor of Municipal Corporation of Warangal (MCW); tried to interfere with possession. The petitioners' vendor filed a suit being O.S.No.695 of 1979 on the file of the Court of the Principal District Munsif, Warangal for permanent injunction. The suit was dismissed on 13.7.1994. Aggrieved by the same, Srinivasa Rao filed appeal being A.S.No.58 of 1994 on the file of the Court of II Additional District Judge, Warangal. The appellate Court by judgment dated 18.6.1997 allowed the appeal and issued a decree for permanent injunction. Be that as it is, the petitioners made a common application to MCH seeking permission to construct a compound wall. By impugned memo dated 25.11.1998, the MCW rejected the application on the ground that the site belongs to MCH, which was handed over to Kakatiya Urban Development Authority (KUDA), the second respondent herein, as per orders of the government in G.O.Rt.No.684, dated 15.7.1996. Aggrieved by the same, the present writ petition is filed. The petitioners contend that in the face of the decree passed by the Court of the II Additional District Judge, Warangal in A.S.No.58 of 1994, the impugned order is unsustainable.

The second respondent filed counter affidavit. It is their case that MCW has handed over the land in question to KUDA on 29.6.1995, that the same was ratified by the Government of Andhra Pradesh in their orders in G.O.Rt.No.684, dated 15.7.1996, and that by G.O.Rt.No.54, dated 03.2.1997 the government accorded permission to Vice-chairman of KUDA to sell the land by public auction. While stating that KUDA is not a party to the suit or appeal (A.S.No.58 of 1994), it is asserted that after taking possession, the second respondent alone is continued in possession. It is also stated that as there is a title dispute, the writ petition is not maintainable.

A reply affidavit is filed denying the counter averments and it is further asserted that the petitioners alone are in possession of the property.

Learned Counsel for the petitioners submits that in the suit filed by the petitioners MCW as a party and while the suit was pending, the land was transferred to KUDA and, therefore, it is also governed by the decree passed by the civil court. Secondly, it is submitted that the transfer of the land belonging to the petitioners by MCW in

favour of KUDA, itself is illegal. **Per contra**, learned Standing Counsel for KUDA submits that in W.P.No.8878 of 1997, the vendor of the petitioners' vendor, is not the owner of the land and that it is recorded in the revenue accounts as "Abadi Sarkari". A copy of the judgment dated 30.4.2004 in W.P.No.8877 of 1997 is also placed before this Court.

When the petitioners applied for construction of compound wall, the same was rejected on the ground that the land belongs to MCW and that it is handed over to KUDA. It is not clear whether the petitioners produced a copy of the judgment in A.S.No.58 of 1994 before the first respondent. Be that as it is, the suit being O.S.No.695 of 1979 was filed by the vendor of the petitioners against Warangal Municipality and five others. It was a suit for injunction simplicitor and based on the decree in the said suit, the petitioners cannot validly claim any title. Therefore, this Court does not find any arbitrariness or illegality in first respondent rejecting building permission. In case, the Corporation rejects permission on the ground that there is disputed question of title from the land belongs to Government/Corporation/KUDA, it is for the petitioners to prove their title by producing valid documents. A decree granted by civil court for permanent injunction, which was not even placed before the corporation, cannot be evidence of title. Therefore, this Court agrees with the submission of the learned Standing Counsel for KUDA that this question cannot be gone into a writ petition. It shall however be open to the petitioners to approach the civil court and obtain appropriate declaration to prove their title.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO,J**)

March 22, 2006.

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